

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MICHIGAN PAIN MANAGEMENT, PLLC,

Plaintiff,

Civil Action No.

vs.

Removed from 16th Circuit Court
Case No. 2017-004908-NF

ESURANCE INSURANCE COMPANY,

Defendant.

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NOTICE OF REMOVAL

ESURANCE INSURANCE COMPANY (“Esurance”), by its attorneys MOBLO, FLEMING & WATT, P.C., removes this second lawsuit filed by Plaintiff, MICHIGAN PAIN MANAGEMENT, P.L.L.C., from the Sixteenth Circuit Court, State of Michigan, where it is now pending, to the United States District Court for the Eastern District of Michigan pursuant to 28 U.S.C. § 1441(b). In support of its Notice of Removal, Esurance states as follows:

PROCEDURAL HISTORY REGARDING PLAINTIFF’S FIRST LAWSUIT AGAINST DEFENDANT

1. On or about March 15, 2017, Plaintiff filed its first Complaint against Esurance in the Third Circuit Court, State of Michigan, Case No. 17-004397-NF,

seeking reimbursement under Michigan's No-Fault Act of bills for treatment and services provided to Demetrius Daniels following an alleged October 18, 2016 motor vehicle accident between October 24, 2016 and March 7, 2017.

Exhibit A.

2. Esurance was served with the Complaint on March 17, 2017 through its process server, The Corporation Company. **Exhibit B.**
3. On or about March 27, 2017, Esurance removed said lawsuit to federal court based on 28 U.S.C. § 1441. [Case No. 2:17-cv-10954, Docket #1].
4. The case was originally assigned to the Honorable Judge Paul Borman and then re-assigned to the Honorable George Caram Steeh on April 17, 2017 due to the pendency of Mr. Daniels' own lawsuit, Case No. 2:17-cv-10209. [Docket #3].
5. On or about June 23, 2017, following the Michigan Supreme Court's ruling in *Covenant Med. Ctr., Inc. v. State Farm Mut. Auto. Ins. Co.*, 500 Mich. 191; 895 N.W.2d 490, Esurance filed a Motion to Dismiss Plaintiff's claims based on Fed. R. Civ. P. 12(b)(1) and 12(b)(6). [Docket #7]. Notably, the Assignments upon which Plaintiff has re-filed the instant lawsuit were attached as an exhibit to Esurance's Motion, demonstrating the Assignments are not newly acquired. [Docket #7-3].

6. Plaintiff was required to file a response brief by July 24, 2017 [Docket #8], but failed to do so. [Docket #9].
7. The Court issued its opinion without oral argument and granted Esurance's Motion to Dismiss on August 29, 2017 [Docket #9], and judgment in favor of Esurance was also entered. [Docket #10].

PROCEDURAL HISTORY REGARDING PLAINTIFF'S CURRENT LAWSUIT

8. On or about December 13, 2017, Plaintiff filed its second suit against Esurance in Macomb County Circuit Court, again seeking the same No-Fault PIP benefits for Demetrius Daniels for the same October 18, 2016 accident. Notably, Plaintiff is seeking reimbursement of bills for the same period of time as before, that is October 24-2016 through March 7, 2017, in addition to new bills allegedly "incurred" through June 5, 2017. **Exhibit C, Plaintiff's Exhibit B.**
9. Esurance was served with the summons and complaint by certified mail on January 19, 2018. **Exhibit D.**
10. While Plaintiff again alleges it is a "corporation" licensed to conduct business under the laws of Michigan, business filings show Plaintiff is a Michigan limited liability company, established in March 2014, with its principal place

of business and registered office in Michigan. Business filings from the State of Michigan also show Dr. James Padula continues to be the owner and sole member/manager of the LLC. **Exhibit E.**

11. Although Dr. Padula has been licensed as a Michigan physician since 2013, public records show Dr. Padula has been domiciled in Florida since at least 1991, as he has been a Florida registered voter since August 1996; owns personal and real property in the state of Florida including his primary residence in Pembroke Pines, Florida; and continues to renew his driver's license using his Pembroke Pines address where he also registers his vehicles in the state of Florida. Dr. Padula also filed for bankruptcy in Florida bankruptcy court in 2010, and said bankruptcy was not discharged until May 2014. In April 2015 and September 2016, the IRS imposed federal tax liens upon Dr. Padula's residence in Pembroke Pines, Florida. **Exhibit F.**
12. Based on the foregoing, Esurance contends the citizenship of Plaintiff Michigan LLC, as determined by the citizenship of sole member Dr. Padula, is Florida.
13. Esurance is a corporation duly organized under the laws of the State of California with its principal place of business in San Francisco, California. As such, Esurance is a citizen of the State of California.

14. In its Complaint, Plaintiff alleges it is entitled to \$127,710.00 in addition to interest and attorneys fees under MCL 500.3142 and MCL 500.3148. **Exhibit C, p. 3.**
15. Based on the diversity of the citizenship of the parties and the amount in controversy, which exceeds \$75,000 and includes Plaintiff's demand for statutory interest and attorney's fees under the No-Fault Act, Esurance contends this Court again has jurisdiction over this matter pursuant to 28 U.S.C. §1332, making this case removable. *Gafford v. General Electric Co.*, 997 F.2d 150 (6th Cir. 1993); *Garza v. Bettcher Industries, Inc.*, 752 F.Supp. 753 (E. D. Mich 1990); *Everett v. Verizon Wireless, Inc.*, 460 F.3d 818, 822 (6th Cir. 2006).
16. Esurance's Notice of Removal is timely because it is filed within thirty (30) days ..." after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based..." 28 U.S.C. §1446(b)(1).
17. The within Notice of Removal will be filed with the Clerk of the Sixteenth Circuit Court, State of Michigan, as required by 28 U.S.C. § 1446(d), and copies of the same will be served upon Plaintiff's counsel.

Respectfully submitted,

MOBLO, FLEMING & WATT, P.C.

/s/ Prerana R. Bacon

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Attorney for Defendant

Dated: February 5, 2018

CERTIFICATE OF SERVICE

I, Prerana R. Bacon, hereby certify that on February 5, 2018, I electronically filed the foregoing papers with the Clerk of the Court using the ECF system. I hereby certify that I have mailed a copy of the foregoing document and all exhibits thereto to the following via United States First-Class Mail:

JESSICA FABER (P76439)
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334

I further certify that I have filed a copy of the foregoing with the Clerk of the Sixteenth Circuit Court, State of Michigan.

MOBLO, FLEMING & WATT, P.C.

/s/ Prerana R. Bacon

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